

AN ORDINANCE 2014 - 04 - 17 - 0251

**AUTHORIZING A FIVE-YEAR LICENSE AGREEMENT WITH ALAMO
KIWANIS CHARITIES, INC. FOR USE OF THE ARNESON RIVER
THEATER FOR ITS ANNUAL PRESENTATION OF "FIESTA NOCHE
DEL RIO" DURING SPRING/SUMMER 2014 - SPRING/SUMMER 2018.**

* * * * *

WHEREAS, since 1957, the City of San Antonio has licensed the Arneson River Theater to Alamo Kiwanis Charities, Inc. ("Alamo Kiwanis") for its annual presentation of "Fiesta Noche Del Rio," which has become a summertime tradition entertaining more than one million visitors from around the world and is one of Alamo Kiwanis's major fundraising events generating nearly \$2.5 million for San Antonio children's charities since its inception; and

WHEREAS, Alamo Kiwanis' most recent license agreement expired in August 2013 and City staff is recommending entering a new five-year license agreement to allow Alamo Kiwanis to continue to use the Arneson River Theater; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the License Agreement with Alamo Kiwanis are authorized and approved. The City Manager, or her designee, is authorized to execute the License Agreement, a copy of which, previously executed by Alamo Kiwanis, is attached to this Ordinance as **Exhibit I**.

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 11001000, Internal Order 280002800002 and General Ledger 4407710.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

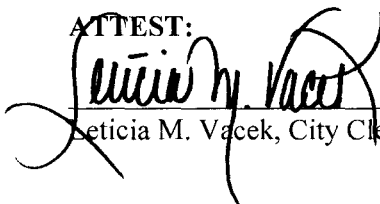
SECTION 4. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 17TH day of April, 2014.

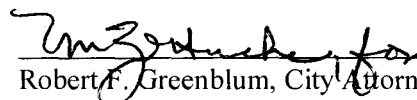


M A Y O R
Julián Castro

ATTEST:


Stetacia M. Vacek, City Clerk

APPROVED AS TO FORM:


Robert F. Greenblum, City Attorney

Voting Results Interface

Agenda Item:	9 (in consent vote: 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 17A, 17B, 18, 18A, 18B, 19, 21, 23, 24, 26, 27, 28, 29, 30, 30A, 30B, 31)
Date:	04/17/2014
Time:	09:47:00 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a five-year license agreement with Alamo Kiwanis Charities, Inc. for use of the Arneson River Theater for its annual presentation of "Fiesta Noche Del Rio". [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

Exhibit I

**LICENSE AGREEMENT
ALAMO KIWANIS CHARITIES, INC.
FIESTA NOCHE DEL RIO**

This License Agreement is made this 19th day of MARCH 2014, by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (hereinafter referred to as "**CITY**"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____, passed and approved by the City Council on the _____ day of _____, 2014, and the ALAMO KIWANIS CHARITIES, INC., a Texas non-profit corporation, acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors (hereinafter called "**LICENSEE**").

1. GRANT OF LICENSE

- 1.1. **CITY**, for and in consideration of the payment of the license fees hereinafter set forth and the covenants and agreements hereinafter contained, does hereby grant to **LICENSEE**, for the operation of the event know as the "Fiesta Noche del Rio", the right to the use and occupancy of the Arneson River Theater and the associated concession stand, hereinafter called "Licensed Premises". **LICENSEE** may also use theater lighting system, located on the stage and in the audience seating area.

2. DURATION OF LICENSE

- 2.1. This License shall be effective from 5:00 p.m. to 11:00 p.m. on the dates indicated on Exhibit I.
- 2.1.1. In addition **LICENSEE** is permitted to conduct ticket sales on said dates beginning at 10:30 a.m. through 8:30 p.m. from the area identified in Exhibit II.
- 2.2. **LICENSEE**, at no additional fee, is permitted to use the Licensed Premises to hold one (1) "press conference" each year prior to the first weekend of Fiesta Noche Del Rio. Use of the License Premises for said purpose is based on availability and requires prior written approval of the Facilities Operations Manager (hereinafter called Manager) of La Villita.
- 2.3. **LICENSEE**, at no additional fee, is permitted to use the Cos House each year, once during the first weekend of Fiesta Noche Del Rio and once during the last weekend of Fiesta Noche Del Rio, with prior written approval of the Manager and based on availability.
- 2.3.1. **LICENSEE** acknowledges and agrees that the **CITY** may rent the Cos House on any of the scheduled nights to the general public as part of the **CITY'S** reservation process and policies.
- 2.3.2. On certain dates within the event dates of this agreement, **CITY** may utilize specific areas or plazas of the Licensed Premises for official City events. **CITY** shall endeavor to give **LICENSEE** thirty (30) days written notice prior to any such utilization. Such use will only be for events of significance to **CITY** and upon written formal notice from the Director of the Department of Culture & Creative Development (hereinafter called Director). In consideration, **CITY** agrees to discount annual fee owed by **LICENSEE** by the daily pro-rata value of annual license fee. **LICENSEE** acknowledges that said use of any or all of the licensed premises for official **CITY** events shall in no way make the **CITY** liable for **LICENSEE'S** lost revenue or incurred expenses.
- 2.4. **LICENSEE** understands and agrees that all personal property placed by **LICENSEE** upon the Licensed Premises is at the sole risk and expense of **LICENSEE** and the **CITY** shall not be

liable to **LICENSEE** or to any other person for loss, theft, vandalism, damage or injury of any kind to person or property. **LICENSEE** shall remove and/or place in designated storage all of its equipment from the Arneson River Theater stage no later than 12:00 midnight following the final performance each week. In the event that such Licensed Premises are not vacated as so provided, the **CITY** is hereby authorized to remove from Licensed Premises, and to store at the expense of the **LICENSEE**, all goods, ware, merchandise and property of any kinds and description which may be occupying the Licensed Premises. **CITY** shall not be liable for any damages or loss to such goods, wares, merchandise or other property which may be sustained by reason of such removal or the place to which it may be removed.

2.5. **LICENSEE** may, with written approval of the Manager, store equipment in certain designated areas of the Arneson River Theater complex if available and is specified by said Manager. **LICENSEE** understands and agrees that the **CITY** assumes no responsibility for the repair or replacement of any of the **LICENSEE'S** property stored in any **CITY** facility.

3. CONSIDERATION

3.1. In consideration of the License as specified herein before, and for **CITY** granting concession rights specified in Article 5 herein after during the term of this License, **LICENSEE** promises to pay to **CITY**, as and for the rights of said License, the amount specified hereinafter. Said amount shall be due and payable to the **CITY** no later than September 20th of each year of the term of this License. Such payment shall be submitted to the Director.

License Year	Annual License Fee	Daily Pro-Rata Value
Year 1 – 2014	\$12,500.00	\$431.03
Year 2 – 2015	\$12,500.00	\$431.03
Year 3 – 2016	\$13,000.00	\$448.27
Year 4 – 2017	\$13,000.00	\$448.27
Year 5 - 2018	\$13,500.00	\$465.52

3.1.1. **CITY** and **LICENSEE** shall inspect and review the premises of the Arneson River Theater and surrounding areas, all furniture and equipment made available for use by **LICENSEE** and acknowledge prior to use and after the event, the condition of the premises, furniture and equipment and note damages and changes to the condition of said premises, furniture and equipment.

3.1.2. **LICENSEE** agrees to reimburse **CITY** at fair market value for any damaged (normal wear and tear expected) and/or lost tables, chairs, and/or stages within thirty (30) days of receipt of formal notice for reimbursement.

3.2 **LICENSEE** will provide one free performance in September per year at an event hosted by the Department of Culture & Creative Development. **CITY** will notify **LICENSEE** of the event date thirty (30) days prior to the actual event date.

4. ACCEPTANCE AND CONDITION OF PREMISES

4.1. **LICENSEE** has had sufficient time and opportunity to examine the Licensed Premises and acknowledge that there is in and about them nothing dangerous to life, limb or health and

hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE'S** use of the Licensed Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose which licensed. **CITY** specifically disclaims any warranty of suitability for **LICENSEE'S** intended commercial purposes.

- 4.2. **LICENSEE** agrees that no representation, respecting the condition of the Licensed Premises and no promises to decorate, alter repair or improve the Licensed Premises either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made a part hereof by specific reference herein.

5. USE AND CONCESSION RIGHTS

- 5.1. The Licensed Premises hereunder shall be occupied and used by **LICENSEE** solely for the operation of the event known "Fiesta Noche del Rio", as well as the operation of up to three (3) "Lone Star Music Nights" per year. **LICENSEE** agrees and specifically understands that this License is confined to the privilege to use the Licensed Premises set forth herein and that the permission herein given does not grant **LICENSEE** any interest or estate in the Licensed Premises but is mere personal privilege to do certain acts of temporary character upon the Licensed Premises and that **CITY** retains dominion, possession and control of said Licensed Premises, including access thereto at all times. **CITY** reserves the right to enforce all necessary and proper rules for the management and operation of the Licensed Premises.
- 5.2. During the term of this License, **LICENSEE** is authorized to contract with a properly licensed concessionaire for the sale of food and both alcoholic and non-alcoholic beverages on the Licensed Premises. **LICENSEE** is further authorized to provide cushion rentals and to sell fans, t-shirts, posters and other "Fiesta Noche del Rio" merchandise. Other merchandise and/or services may be offered for sale to the general public on the Licensed Premises only after approval by the Manager. The prices to be charged for aforesaid goods and services shall be subject to written approval of the Director, and **LICENSEE** shall submit proposed prices for goods and services to the Director no later than thirty (30) days prior to the start of each season.
- 5.3. **LICENSEE** agrees that in implementation of such concession rights it shall abide by conform to, and comply with all applicable laws, ordinances, rules and regulations and will not do or permit to be done anything in violation thereof. If the attention of **LICENSEE** is called to any such violation, **LICENSEE** or those under its control will immediately desist from and correct such violation.

6. NON-DISCRIMINATION

- 6.1. As a party to this contract, **LICENSEE** understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

7. CITY'S OBLIGATIONS

- 7.1. **CITY** shall use its best efforts to insure that the Licensed Premises are in good condition and fit for the purpose authorized hereunder and that all existing restrooms, electrical power, water, plumbing and mechanical equipment are in working order. However, **CITY** shall in no way be

liable for damages by reason of Licensed Premises being in disrepair or injured or by any casualty whatsoever which occurs unexpectedly or occurs by some reason which is not within the reasonable control of **CITY**. **CITY** further agrees that it will use its best efforts to not schedule routine maintenance on the Licensed Premises at times that conflict with Fiesta Noche Del Rio performances.

- 7.2. **CITY** shall provide trash and recycling receptacles and transfer from Licensed Premises to its collection facilities. **LICENSEE** shall collect and place all trash and recyclables in provided receptacles.
- 7.3. **CITY** shall provide one maintenance person to be on the Licensed Premises to perform emergency repairs during the hours of the event.
- 7.4. **CITY** shall aid in promoting **LICENSEE'S** event through the **CITY'S** social media outlets, newsletters, and calendar listings. **LICENSEE** will be allowed to setup an informational table at Department of Culture & Creative Development sponsored events.

8. LICENSEE'S OBLIGATIONS

- 8.1. A representative of **LICENSEE**, approved by the Department of Culture & Creative Development, shall remain on the Licensed Premises during the term hereof and until the performers and public have left the Licensed Premises.
- 8.2. **LICENSEE** agrees, at its expense, to clean and clear the Arneson River Theater and the concession booth of **LICENSEE'S** materials and equipment after each performance pursuant to paragraphs 2.3 and 2.4 after each performance.
- 8.3. **LICENSEE** shall clear backstage and seating areas of the Arneson River Theater of trash debris left behind by performers and audience and place collected trash in areas approved by the Manager.
- 8.4. Subject to written approval of the Manger, **LICENSEE** is authorized to install such additional temporary electrical wiring as **LICENSEE** deems necessary to accommodate the needs of "Fiesta Noche Del Rio". The cost of all temporary wiring and removal of same shall be borne by **LICENSEE**. Any electrical wiring or other electrical installation put in place by **LICENSEE** shall be subject to **CITY** inspection and shall conform to and be compatible with the electrical system in place at the Arneson River Theater. **LICENSEE** shall be responsible for providing trained technicians to operate theatrical lighting board and system.
- 8.5. **LICENSEE** shall not injure, mar or deface in any manner Licensed Premises and shall not cause nor permit anything to be done whereby Licensed Premises shall be, in any manner injured marred or defaced, nor shall it drive or permit to be driven any nails, hooks, tacks or screws into any finished wall or any part of Licensed Premises, nor shall it make or allow to be made any alteration of any kind therein without the approval of the Director.
- 8.6. **LICENSEE** shall pay all license fees and taxes lawfully levied against it during the term thereof.
- 8.7. **LICENSEE** covenants that it and those under its control, including concession contractor(s) referred to in paragraph 5.2 shall comply with all La Villita loading and unloading regulations and traffic and parking regulations as applicable to Villita and Presa streets. Should exceptions to such regulations be required by **LICENSEE**, a written request for such exceptions shall be submitted to the Manager at least seventy-two (72) hours in advance of the need. **CITY** does not guarantee to provide **LICENSEE** or its contractors storage space in the concession stand of

the Arneson Theater during non-scheduled hours.

- 8.8. **LICENSEE** further understands and agrees that, in the event the **LICENSEE** intends to play or perform copyrighted music it must obtain licenses for such music from the owner's of such copyrights, including, but not limited to, ASCAP. **LICENSEE** covenants and agrees to fully indemnify and hold harmless, the **CITY** for any claims for damages or licensing fees claimed by and copyright holder based on the **LICENSEE'S** use of the Licensed Premises.

9. PEDESTRIAN TRAFFIC

- 9.1. **LICENSEE** shall have the right hereunder to regulate pedestrian traffic through the Arneson River Theater. The times and duration of such traffic regulation shall be approved in writing by the Manager.

10. SECURITY

- 10.1. Security requirements of La Villita:

- 10.1.1. All events in La Villita require state-certified Peace Officers at a rate to be determined by the law enforcement office. The minimum duty time required is three (3) hours.
- 10.1.2. Arrangements for such security shall be verified to City's satisfaction at least fourteen (14) days before commencement of the term of this license.
- 10.1.3. **LICENSEE** understands and agrees that security personnel are subcontractors of **LICENSEE**. As such, the City accepts no liability for any cause, action, or loss related to agreements or arrangement between security personnel and **LICENSEE**.
- 10.1.4. **LICENSEE** understands and agrees that the duties of the security officers include protection of the City's interests in Licensed Premises and equipment, as well as monitoring of **LICENSEE'S** operations conducted hereunder.
- 10.1.5. A State of Texas Certified Peace Officer(s) must be present from thirty (30) minutes before until thirty (30) minutes after an event. The Officers must be in uniform and must be on duty the entire duration of the event and until thirty (30) minutes after the end of the event. No function will be allowed to begin until required security personnel are on duty.

11. TERMINATION

- 11.1. **CITY** may cancel the License by giving thirty (30) days written notice upon default of **LICENSEE** in the performance of any covenant or agreement herein contained and the failure of **LICENSEE** to commence to remedy same within fifteen (15) days of receipt of written notice and diligently pursue the remedy.
- 11.1.1. **CITY** may also terminate the License for the following:
- 11.1.1.1. In the event this License is deemed to be inconsistent with the best public use of the property as determined by **CITY** through passage of an ordinance, or
- 11.1.1.2. In the event the use of the Licensed Premises shall have been deemed a nuisance by a court of competent jurisdiction.
- 11.2. **LICENSEE** may cancel this License by giving thirty (30) days written notice.

12. LICENSEE'S RESPONSIBILITIES RELATED TO CONCESSIONS

- 12.1. **LICENSEE** shall not use the concession stand located on the Licensed Premises for storage except as authorized in Article 5. Further, **LICENSEE** shall keep concession stand clean and sanitary during its use for "Fiesta Noche del Rio" events authorized herein.
- 12.2. **LICENSEE** shall purchase and maintain current all necessary Federal, State, and Local licenses and permits at its sole expense.
- 12.3. **LICENSEE** shall insure that its designated representative is available for immediate contact and liaison with the La Villita office and with those making deliveries of concession merchandise to be sold at "Fiesta Noche del Rio" performances.
- 12.4. **LICENSEE** shall insure that its concession contractor(s) comply with Villita Street and Presa Street parking regulations. **LICENSEE** shall further insure that its concession contractor's coordinate delivery times with the Manager to avoid conflicts with other La Villita event or with La Villita shop tenant's operations. **LICENSEE** shall insure that all concession contractor(s) comply with City, State, and Federal and all other health, safety, licensing and permitting requirements at their sole expense.
- 12.5. **LICENSEE** and/or **LICENSEE'S** concession contractor(s) shall provide sufficient concession employees to adequately service patrons. No **CITY** employees may be directly or indirectly associated with the management of the concession operations.

13. INDEMNIFICATION

- 13.1 **LICENSEE** covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LICENSEE'S** activities under this Agreement, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or Sub licensee of **LICENSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT **LICENSEE** AND **CITY** ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE **CITY** UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- 13.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE'S** activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at

LICENSEE'S cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LICENSEE** of any of its obligations under this paragraph.

14. INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any work under this Agreement, **LICENSEE** shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Culture & Creative Development Department, which shall be clearly labeled "Kiwanis International's Fiesta Noche Del Rio" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Culture & Creative Development Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

14.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

14.3 A **LICENSEE'S** financial integrity is of interest to the City; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the City, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/ \$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent LICENSEES c. Products/Completed Operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

f. Damage to property rented by you	\$100,000
4. Liquor Liability	<u>\$1,000,000 per occurrence, \$2,000,000 aggregate</u>

14.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LICENSEE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. LICENSEE shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Department of Culture & Creative Development Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

14.6 LICENSEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

14.6.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

14.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

14.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

14.6.4 Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

14.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend LICENSEE'S performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

14.8 In addition to any other remedies the City may have upon LICENSEE'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order LICENSEE to stop work hereunder, and/or withhold any payment(s) which become due to LICENSEE hereunder until LICENSEE demonstrates compliance with the requirements hereof.

- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its Sub **LICENSEES'** performance of the work covered under this Agreement.
- 14.10 It is agreed that **LICENSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 14.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 14.12 **LICENSEE** and any Sub **LICENSEES** are responsible for all damage to their own equipment and/or property.

15. NO ASSIGNMENT

- 15.1 This License is personal to **LICENSEE**. Except as authorized herein, it is non-assignable, and any attempt to assign this **LICENSEE** without approval by City Council through adoption of a **CITY** ordinance will terminate all privileges granted to **LICENSEE** hereunder.

16. RELATIONSHIP OF PARTIES

- 16.1 Nothing contained herein shall be deemed or construed by the parties hereto , or by a third party, as creating the relationship of principle and agent, partners, joint ventures or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Licensor and **LICENSEE**.

17. SEPARABILITY

- 17.1 If any clause or provision of this License is illegal, invalid or unenforceable under present or future laws effective during the term of this License, then and in the event it's the intention of the parties hereto that the remainder of the License shall not be affected thereby, and it is also the intention of the parties to this License that in lieu of each clause or provision of this License that is illegal, invalid or unenforceable, there be added as a part of this License a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

18. TAXES AND LICENSES

- 18.1 **LICENSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon **LICENSEE** or upon **LICENSEE'S** business or upon any of the **LICENSEE'S** property used in connection therewith and shall maintain in current status all Federal, State, and local licenses and permits required for the activities authorized herein.

19. CONDUCT AND APPEARANCE OF EMPLOYEES

- 19.1 Any employee in **LICENSEE'S** activities authorized hereunder who may be deemed to be discourteous or objectionable on reasonable grounds shall be removed from the Licensed

Premises on demand by CITY. CITY likewise reserves the right to eject any objectionable person or persons, including LICENSEE'S employees, from or about the License Premises, and upon the exercise of this authority through the CITY'S agents or employees, LICENSEE hereby waives any right and all claims for damages against CITY or any of its agents, officials or employees by reason of such action.

20. RESERVATIONS BY CITY

- 20.1 CITY reserves the right to enter the Licensed Premises at all reasonable times for the purpose of examining, inspection or making repairs as herein provided. LICENSEE shall not be entitled to an abatement or reduction of fee consideration by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of LICENSEE from the Licensed Premises. Should construction or other activity by CITY prevent LICENSEE'S use of the Licensed Premises for the purposed outlined herein for longer than ten (10) days, LICENSEE shall deduct from payment to CITY and with CITY'S approval, the loss of revenue based on the previous year's income from the impacted area.
- 20.2 No provision of this License Agreement shall operate in any manner to prevent CITY from permitting displays, tournaments or amusement or River Walk parades for the benefit of the public outside the licensed premises.
- 20.3 CITY Park Police, La Villita maintenance staff and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate and circumstances, conditions or person that may appear to be suspicious. LICENSEE shall cooperate with all requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. LICENSEE expressly understands and agrees that CITY has not agreed to act and does not act as insurer of LICENSEE's property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

21. CONFLICT OF INTEREST

- 21.1 LICENSEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale of the City of land, materials, supplies, or service if any of the following individual(s) or entities is part to the contract or sale: a City officer or employee; his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity or ten (10) percent or more of the fair market value of the business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner, or parent or subsidiary business entity.

22. NOTICES

- 22.1 Notices to CITY require or appropriate under this License shall be deemed sufficient if in writing and mailed, registered or certified mail, postage pre-paid, addressed to:

Director
Department of Culture & Creative Development
P.O. Box 839966
San Antonio, Texas 78283-3966

Or at such other address as may have been designated from time to time in writing by the City Manager of the City of San Antonio.

22.2 Notices to LICENSEE shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to LICENSEE at the address designated as follows:

Chairman
Alamo Kiwanis Charities, Inc.
911 North Main, Suite B-4
San Antonio, Texas 78212

23. PARTIES BOUND

23.1 This License shall be binding upon and inure to the benefit of the parties hereto only.

24. APPROVAL OF CITY

24.1 Whenever this License calls for approval by CITY, unless otherwise explained herein such approval shall be evidenced by written approval of the Director or his designee.

25. LIEN FOR RENT

25.1 In consideration of the mutual benefits arising under this License, and to the extent allowed by applicable law, LICENSEE does hereby mortgage and grant a security interest under the Texas Business and Commerce Code unto CITY upon all property of LICENSEE now or hereafter placed in or upon Licensed Premises (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), and such property is hereby subjected to a lien and security interest in favor of CITY and shall be and remain subject to such a lien and security interest of CITY for payment of all rents and other sums agreed to be paid by LICENSEE herein. At CITY'S request LICENSEE shall execute and deliver to CITY a financing statement appropriate for use under said Code. Such lien and security interest shall be in addition to and cumulative of City's liens provided by law.

26. GENDER

26.1 Word of any gender used in this License shall be held and construed to include any other gender, and word in the singular number shall be held to include the plural, unless the context otherwise requires.

27. CAPTIONS

27.1 The captions contained in this License are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License.

28. ENTIRE AGREEMENT

28.1 This License contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and not other agreements oral or otherwise regarding the subject matter of this License shall be deemed to exist or to bind the parties hereto, its being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written. However, an amendment, modification or alteration of the terms of this License may be executed and will be binding if in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

29. AUTHORITY

29.1 If the signer of this License Agreement is an entity or other than an individual who is the LICENSEE, then the signer hereof for LICENSEE hereby represents and warrant that he or she has full authority to execute this License Agreement on behalf of LICENSEE.

WITNESS, the signature of the parties hereto in multiple originals, this the _____ day of _____, 2014 (Commencement Date).

**CITY OF SAN ANTONIO,
A Texas Municipal Corporation**

LICENSEE:

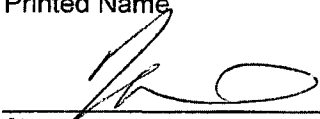
Alamo Kiwanis Charities, Inc.

By: _____
Sheryl L. Sculley, City Manager

THOMAS BALDWIN
Printed Name

ATTEST:

City Clerk


Signature
PRESIDENT
Title

APPROVED AS TO FORM:

City Attorney

911 N. MAIN AVE., STE. B-4
Address
SAN ANTONIO, TX 78212
City, State, and Zip Code
(210) 226-4651
Area Code/Telephone Number

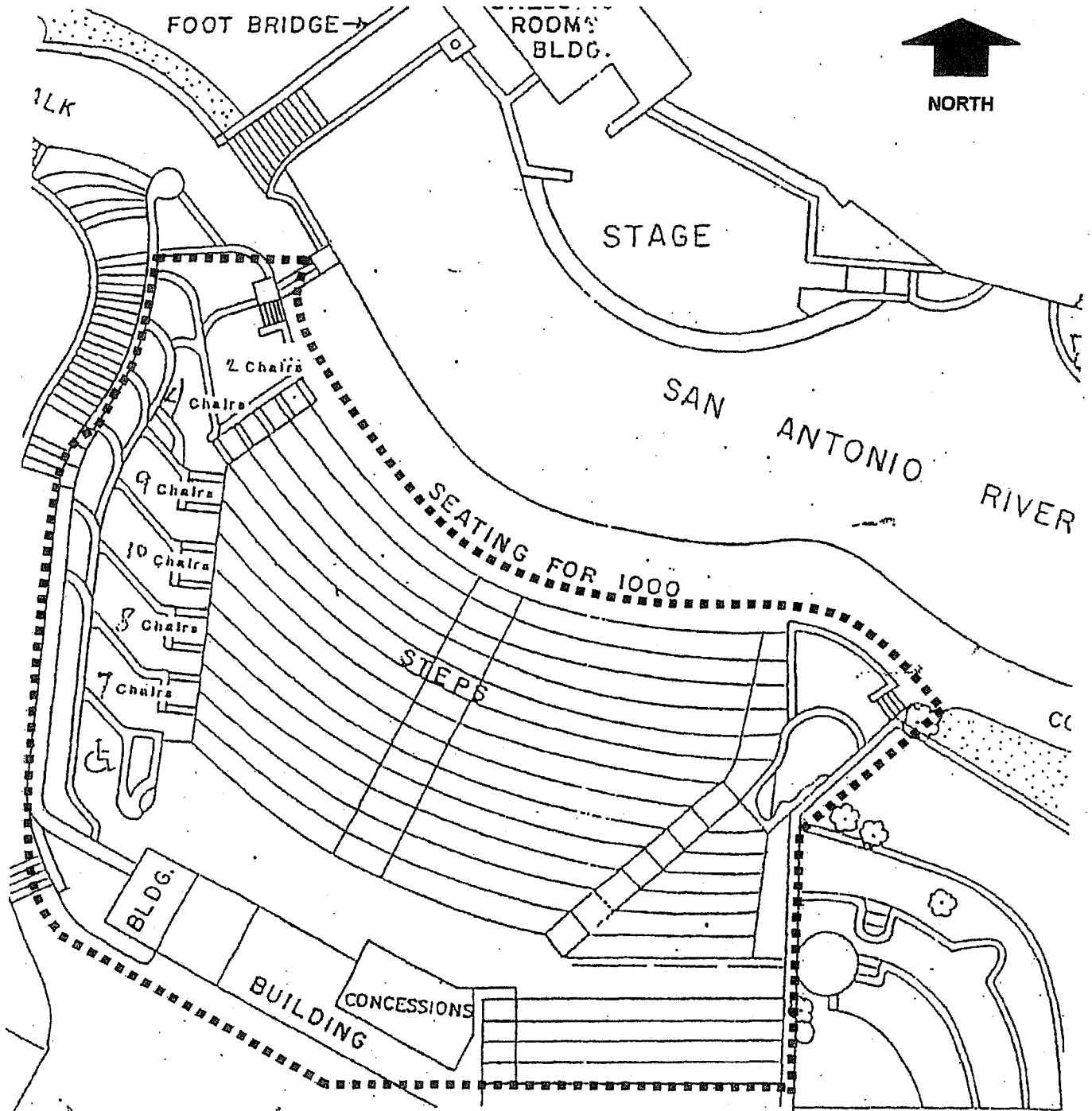
EXHIBIT I

**Alamo Kiwanis Club Charities, Inc.
Fiesta Noche del Rio
Dates for 2014-2018 Seasons**

Month/Year	2014	2015	2016	2017	2018
May	13,14,16,23,24,30,31	7,14,16,22,23,29,30,31	5,12,13,14,20,27,28,29	4,11,12,13,19,26,27,28	3,10,11,12,18,25,26,27
June	6,7,13,14,20,21,27,28	5,6,12,13,19,20,26,27	3,4,10,11,17,18,24,25	2,3,9,10,16,17,23,24,30	1,2,8,9,15,16,22,23,29,30
July	3,4,5,11,12,18,19,25,26	3,4,10,11,17,18,24,25,31	1,2,8,9,15,16,22,23,29,30	1,7,8,14,15,21,22,28,29	6,7,13,14,20,21,27,28
August	1,2,8,9,15,16	1,7,8,14,15	5,6,12,13	4,5,11,12	3,4,10,11
Total Days	29	29	29	29	29
Request use of Cos House for the last Saturday of each year:					
	Aug 16	15-Aug	13-Aug	12-Aug	11-Aug

The first date listed is for rehearsal.
The second date listed is for dress rehearsal.

EXHIBIT II
ARNESON RIVER THEATER



LEGEND

■ ■ ■ ■	Designated Ticket Sales Area (Section 2.1.1)
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